



General Assembly

February Session, 2004

Amendment

LCO No. 2889

SB0047702889SD0

Offered by:

SEN. COLAPIETRO, 31st Dist.

To: Senate Bill No. 477

File No. 171

Cal. No. 149

"AN ACT CONCERNING CONSTRUCTION CONTRACTS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 42-158i of the general statutes, as amended by
4 section 1 of public act 03-56, is repealed and the following is
5 substituted in lieu thereof (*Effective October 1, 2004*):

6 As used in sections 42-158i to 42-158n, inclusive, as amended, unless
7 the context otherwise requires:

8 (1) "Owner" means any individual, corporation, nonprofit
9 corporation, partnership, limited partnership, limited liability
10 company or other business entity that is the owner of record or lessee
11 of real property upon which [a commercial or industrial building]
12 construction work is to be or is being constructed, renovated or
13 rehabilitated pursuant to a construction contract regarding such real
14 property.

15 (2) "Construction contract" or "contract" means any contract for the
16 construction, renovation or rehabilitation in this state on or after
17 October 1, 1999, of a commercial or industrial building, or for the
18 renovation or rehabilitation of a commercial or industrial building for
19 which a certificate of occupancy is required, including any
20 improvements to real property that are associated with such
21 construction, renovation or rehabilitation, or any subcontract for a
22 project associated with the construction, renovation or rehabilitation of
23 a commercial or industrial building between an owner and a
24 contractor, or between a contractor and a subcontractor or
25 subcontractors, or between a subcontractor and any other
26 subcontractor. "Construction contract" or "contract" does not include
27 any public works or other building contract entered into with this
28 state, the United States, any other state, and any municipality or other
29 political subdivision of this state or any other state or a contract or
30 project funded or insured by the United States Department of Housing
31 and Urban Development or a contract for a building intended for
32 residential occupancy containing four or less units.

33 (3) "Retainage" means a sum withheld from progress payments to
34 the contractor or subcontractor, otherwise payable to a contractor or
35 subcontractor by an owner conditioned on substantial or final
36 completion of all work in accordance with the terms of a written or
37 verbal construction contract, but does not include any sum withheld
38 due to the contractor's or subcontractor's failure to comply with
39 construction plans and specifications.

40 Sec. 2. Section 42-158j of the general statutes is repealed and the
41 following is substituted in lieu thereof (*Effective October 1, 2004*):

42 (a) [Unless otherwise agreed by the parties in the terms of a written
43 construction contract, each] Each construction contract shall contain
44 the following provisions: (1) A requirement that the owner pay any
45 amounts due any contractor, subcontractor or supplier in a direct
46 contractual relationship with the owner, whether for labor performed
47 or materials furnished, not later than [fifteen] thirty days after the date

48 any written request for payment has been made by such contractor,
49 subcontractor or supplier; (2) a requirement that the contractor pay
50 any amounts due any subcontractor or supplier, whether for labor
51 performed or materials furnished, not later than [fifteen] thirty days
52 after the date the contractor receives payment from the owner which
53 encompasses labor performed or materials furnished by such
54 subcontractor or supplier; and (3) a requirement that the contractor
55 shall include in each of its subcontracts a provision requiring each
56 subcontractor and supplier to pay any amounts due any of its
57 subcontractors or suppliers, whether for labor performed or materials
58 furnished, not later than [fifteen] thirty days after the date such
59 subcontractor or supplier receives a payment from the contractor
60 which encompasses labor performed or materials furnished by such
61 subcontractor or supplier.

62 (b) (1) If payment is not made by an owner in accordance with the
63 requirements of subdivision (1) of subsection (a) of this section or any
64 applicable construction contract, such contractor, subcontractor or
65 supplier shall set forth its claim against the owner through notice by
66 registered or certified mail.

67 (2) If payment is not made by a contractor in accordance with the
68 requirements of subdivision (2) of subsection (a) of this section or any
69 applicable construction contract, the subcontractor or supplier shall set
70 forth its claim against the contractor through notice by registered or
71 certified mail.

72 (3) If payment is not made by a subcontractor or supplier in
73 accordance with the provisions of subdivision (3) of subsection (a) of
74 this section, the subcontractor or supplier to whom money is owed
75 shall set forth its claim against the subcontractor or supplier who has
76 failed to comply with the provisions of said subdivision (3) through
77 notice by registered or certified mail.

78 (4) Ten days after the receipt of any notice specified in subdivisions
79 (1), (2) and (3) of this subsection, the owner, contractor, subcontractor

80 or supplier, as the case may be, shall be liable for interest on the
81 amount due and owing at the rate of one per cent per month. Such
82 interest shall accrue beginning on the date any such notice is received.
83 In addition, such owner, contractor, subcontractor or supplier, upon
84 written demand from the party providing such notice, shall be
85 required to place funds in the amount of the claim, plus such interest
86 of one per cent per month, in an interest-bearing escrow account in a
87 bank in this state, provided such owner, contractor, subcontractor or
88 supplier may refuse to place the funds in escrow on the grounds that
89 the party making such demand has not substantially performed the
90 work or supplied the materials according to the terms of the
91 construction contract. In the event that such owner, contractor,
92 subcontractor or supplier refuses to place such funds in escrow and
93 such owner, contractor, subcontractor or supplier is found to have
94 unreasonably withheld payment due a party providing such notice,
95 such owner, contractor, subcontractor or supplier shall be liable to the
96 party making demand for payment of such funds and for reasonable
97 attorneys' fees plus interest on the amount due and owing at the rate of
98 one per cent per month. In addition, any owner, contractor,
99 subcontractor or supplier who is found to have withheld payments to
100 a party providing such notice in bad faith shall be liable for ten per
101 cent damages.

102 (c) No payment may be withheld from a subcontractor or supplier
103 for work performed or materials furnished because of a dispute
104 between a contractor and another contractor, subcontractor or
105 supplier.

106 (d) This section shall not be construed to prohibit progress
107 payments prior to final payment of the contract and is applicable to all
108 subcontractors and suppliers for material or labor whether they have
109 contracted directly with the contractor or with some other
110 subcontractor on the work. Each owner that enters into a contract
111 under this section and fails or neglects to make payment to a
112 contractor for labor and materials supplied under a contract, as
113 required pursuant to this section, shall, upon demand of any person

114 who has not been paid by the contractor for such labor and materials
115 supplied in the performance of the work under the contract, promptly
116 pay the person for such labor or materials. Demand for payment shall
117 be served on the owner and a copy of each demand shall be sent to the
118 contractor by certified mail, return receipt requested to any address at
119 which the owner and contractor conduct business. If the owner fails to
120 make such payment, the person shall have a direct right of action
121 against the owner in the superior court for the judicial district in which
122 the project is located. The owner's obligations for direct payments to
123 the contractor, subcontractors or suppliers giving notice pursuant to
124 this section shall be limited to the amount owed to the contractor by
125 the owner for work performed under the contract at the date such
126 notice is provided."

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>